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2014 IL App (4th) 140178-U  
NOS. 4-14-0178, 4-14-0217 cons.  
IN THE APPELLATE COURT

**FILED**  
July 21, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

OF ILLINOIS

FOURTH DISTRICT

In re: S.W. and M.B., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v. (No. 4-14-0178)	)	No. 12JA49
DWAYNE WILLIAMS,	)	
Respondent-Appellant.	)	
-----	)	
In re: S.W. and M.B., Minors,	)	
THE PEOPLE OF THE STATE OF ILLINOIS	)	
Petitioner-Appellee,	)	
v. (No. 4-14-0217)	)	Honorable
SHARIYA BROTHERN,	)	John R. Kennedy,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Turner and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed where the trial court's best-interest finding was not against the manifest weight of the evidence.

¶ 2 In October 2013, the State filed a motion seeking a finding of unfitness and the termination of the parental rights of respondent father, Dwayne Williams, and respondent mother, Shariya Brothern, as to their children, S.W. (born June 18, 2011) and M.B. (born September 6, 2012). In January 2014, the trial court entered an order finding both Williams and Brothern were unfit and unable to care for, protect, or train the minors. In February 2014, the court found it was in the minors' best interests to terminate the parental rights of Williams and Brothern.

¶ 3 The parents appealed, arguing the court's best-interest findings were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the Termination Proceedings

¶ 6 In November 2012, the State filed a petition for adjudication of wardship for abuse and neglect, alleging (1) M.B. and S.W. were abused in that the respondent parents (a) inflicted, or allowed to be inflicted, injury on the minor children (705 ILCS 405/2-3(2)(i) (West 2012)) (count I), and (b) created a substantial risk of physical injury to the minors by other than accidental means (705 ILCS 405/2-3(2)(ii) (West 2012)) (count II); (2) M.B. was neglected because her environment was injurious to her welfare in that she was diagnosed with failure-to-thrive syndrome (705 ILCS 405/2-3(1)(b) (West 2012)) (count III); and (3) M.B. and S.W. were neglected because their environment was injurious to their welfare in that the respondent parents exposed both children to a risk of physical harm (705 ILCS 405/2-3(1)(b) (West 2012)) (count IV).

¶ 7 The State's petition was filed in response to the following events. In the early morning hours on November 3, 2012, Brothern brought M.B. to the emergency room at Carle Hospital (Carle) in Urbana, Illinois, after Williams discovered M.B. with a mouth full of blood. Dr. Davison, a pediatrician at Carle, treated M.B. and determined M.B. had "an air leak in her neck causing severe swelling, massive [gastrointestinal] bleed[ing,] and a possible ruptured esophagus." Neither parent provided an explanation as to how M.B. sustained her physical injuries. Dr. Davison also diagnosed M.B. with failure-to-thrive syndrome due to the fact she had only gained one ounce in body weight since her release from the neonatal intensive-care unit (NICU) at Carle three weeks earlier. This diagnosis was attributable to the respondent parents

feeding M.B. cow's milk instead of formula, despite being specifically advised by a pediatrician not to feed the child cow's milk.

¶ 8 Dr. Davison subsequently made a hotline report to the Department of Children and Family Services (DCFS) and took protective custody of M.B. Later that day, Dr. Reifsteck, a pediatric hospitalist at Carle, determined M.B. had a bruised heart and liver in addition to the injuries reported by Dr. Davison. This, coupled with M.B.'s elevated cardiac and liver enzymes, indicated M.B. had suffered blunt-force trauma and led Dr. Reifsteck to conclude M.B.'s injuries had been inflicted.

¶ 9 On November 7, 2012, the trial court ordered temporary custody of the minors to be placed with DCFS, finding probable cause shown to believe both minors were abused and neglected. The court based its finding on (1) M.B.'s diagnosis of failure-to-thrive syndrome and Brothern's admission she fed M.B. cow's milk when she ran out of formula, and (2) the failure of either parent to provide a rational explanation for M.B.'s injuries.

¶ 10 In January 2013, the cause proceeded to an adjudicatory hearing, at which the trial court found the State had proved all four counts contained in its petition. Following a February 2013 dispositional hearing, the court found it was in the minors' best interests to make them wards of the court. The court then granted custody and guardianship to DCFS.

¶ 11 B. The Criminal Case Involving Respondent Father

¶ 12 On November 9, 2012, the State charged Williams with aggravated battery to a child, a Class X felony (720 ILCS 5/12-3.05(b)(1) (West 2012)), in Champaign County case No. 12-CF-1832, alleging he caused M.B.'s injuries. Following an October 2013 trial, a jury found Williams guilty of the charged offense. In January 2014, the trial court sentenced Williams to 15

years' imprisonment. Williams' appeal from that judgment is currently pending in this court in case No. 4-14-0062.

¶ 13 C. The Termination Proceedings

¶ 14 In October 2013, the State filed a motion seeking a finding of unfitness and the termination of the respondent parents' parental rights. Therein, the State alleged Williams and Brothern were unfit because they had failed to (1) make reasonable efforts to correct the conditions that were the basis for the removal of the minors from their custody (750 ILCS 50/1(D)(m)(i) (West 2012)) (count I); (2) make reasonable progress toward the return of the minors within the initial nine-month period following the adjudication of abuse and neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count II); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors (750 ILCS 50/1(D)(b) (West 2012)) (count III). Additionally, the State alleged Williams was an unfit parent because he was currently incarcerated, had been repeatedly incarcerated because of criminal convictions, and his repeated incarcerations prevented him from discharging his parental duties to the minors (750 ILCS 50/1(D)(s) (West 2012)) (count IV).

¶ 15 Following a January 2014 unfitness hearing, the trial court found Williams to be unfit on counts I, II, and III but found the State failed to meet its burden on count IV. The court based its findings on the fact Williams "severely physically abused the child [M.B.] by causing compressive or crushing injuries to her chest and abdomen." The court noted the injuries were not accidental and that, as a result of these events, Williams had been convicted of aggravated battery to a child and sentenced to 15 years' imprisonment. Further, the court noted Williams failed to complete any services since the event and made no efforts or progress toward reunification.

¶ 16 The trial court found Brothern to be unfit on counts I, II, and III. The court based its findings on the fact Brothern had "not been able to accept that [M.B.] was injured due to abuse." Further, Brothern refused to accept the medical evidence regarding the causation of M.B.'s injuries and Williams' role in the injuries inflicted on M.B. The court noted Brothern was protective of Williams to the point where she did not disclose his whereabouts before he was apprehended and planned to testify in Williams' criminal case that she fell on M.B. and caused M.B.'s injuries. This mindset, the court found, "substantially inhibited [Brothern's] ability to make progress toward restoration of custody." Further, although Brothern had been referred for domestic-violence counseling, she was discharged for failing to attend and advised a caseworker she did not see the need for domestic-violence counseling. Brothern was also referred to parenting classes but was terminated for failing to attend.

¶ 17 Prior to the February 2014 best-interest hearing, the Center for Youth and Family Solutions (CYFS) filed a best-interest report. The report revealed S.W. and M.B. had been placed within the same foster home after M.B.'s release from Carle for the injuries she sustained in November 2012. S.W. and M.B. had developed a strong bond with each other as a result of their placement together. Further, S.W. and M.B. had bonded with their foster parent, as evidenced by the minors' responses to her.

¶ 18 The report noted S.W. was happy in his foster home, as evidenced "by his constant positive demeanor." Further, the report indicated S.W.'s growth and development was on target for his age. S.W.'s foster parent was a great advocate for S.W.'s learning both in day care and at home. S.W. attended an in-home day care facility, where he benefited from the home setting and socializing with other children. Additionally, the day care facility was "a great

support for [S.W.] becoming successfully potty trained," and S.W. rarely has "accidents" at night. S.W. uses his manners and is able to communicate his wants and needs.

¶ 19 With respect to M.B., the report noted M.B. required extensive medical treatment on a daily basis when she first arrived in the foster home, but the foster parent took the steps necessary to fully understand and meet M.B.'s needs. M.B. was now a happy and healthy one-year-old, who could nearly walk on her own and had begun speaking, using words such as "please" and "thank you." Further, M.B. always had a smile on her face.

¶ 20 The report also noted the diligence the foster parent had taken with regard to the care of both children, especially M.B. According to the report, it was not known initially whether M.B. would live through, or develop normally after, the injuries she suffered in November 2012. However, "[d]ue to the constant love and care [the] foster parent gave [M.B.], she is now a beautiful[,] thriving young child," who is "developing normally and is progressing through her developmental stages."

¶ 21 The best-interest report also noted Williams had not engaged in any services offered to him by the Champaign County jail throughout the entire pendency of this case and did not have any contact with the caseworker after the unfitness hearing. Brothern, on the other hand, had engaged in individual counseling and periodically completed her random drug drops. Brothern did not, however, successfully complete parenting or domestic-violence classes at Cognition Works. Further, Brothern was unsuccessfully discharged from the No Limits program, which was provided by the Regional Planning Commission to help Brothern achieve financial and residential independence, due to lack of attendance. Finally, the report noted the foster parent had signed a permanency agreement and was willing to make S.W. and M.B. permanent members of her family.

¶ 22 At the February 2014 best-interest hearing, the trial court considered the report from CYFS, the order finding each parent unfit, recommendations from the parties, and the factors contained in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2012)). With respect to Williams, the court noted that if it did not terminate Williams' rights, the children would grow up without the presence of a father due to his lengthy incarceration. With respect to Brothern, the court noted that if it did not terminate Brothern's rights, she would continue to make choices that would jeopardize the children's safety, as evidenced by her failure to recognize Williams was the cause of M.B.'s injuries. On the other hand, the court noted the prospect of permanency through adoption, as the children's foster parent indicated a willingness to provide permanency for the minors.

¶ 23 On this basis, the trial court found it was in the minors' best interests to terminate the parental rights of both Williams and Brothern. Further, the court found consideration of the factors in the best-interest statute (705 ILCS 405/1-3(4.05) (West 2012)) supported its finding by clear and convincing evidence. The court then ordered DCFS to continue as guardian of the minors.

¶ 24 These appeals followed. On the respondent parents' motion, we consolidated the matters for review.

¶ 25 **II. ANALYSIS**

¶ 26 Neither Williams nor Brothern challenges the trial court's findings of unfitness. Instead, both parents contend the court's best-interest finding was contrary to the manifest weight of the evidence.

¶ 27 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interests of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill.

App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interests of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 262, 810 N.E.2d at 126-27.

¶ 28 The best-interest stage is about the best interests of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments \*\*\*;

\* \* \*

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 29 In this case, the record demonstrates S.W. and M.B. have resided with their foster parent since November 2012, which is most of their young lives. According to the children's caseworker, each child has developed a strong bond with one another and the foster parent. Further, when S.W. and M.B. entered the foster parent's care, uncertainty as to whether M.B. would survive her injuries existed. However, the foster parent provided the necessary care to M.B. and, as a result of the foster parent's diligence, M.B. was a thriving young girl who was developing normally. Most importantly, the children's foster parent has expressed her willingness to make both M.B. and S.W. permanent members of her family.

¶ 30 Conversely, the record shows Williams and Brothern cannot, at this time or in the near future, provide the minors with permanency. Williams is currently incarcerated for his role in causing M.B.'s severe injuries. Williams has not engaged in any services throughout his entire incarceration. Thus, Williams is not in a position to provide permanency for either minor in the near future.

¶ 31 Brothern regularly visited S.W. and M.B. throughout the pendency of this case. She exhibited some improvement during these visits, but these visits were never unsupervised or in a location other than CYFS's office. Although Brothern engaged in individual counseling, she did not successfully complete her random drug drops, parenting classes, domestic-violence classes, or the No Limits program, which was designed to help her achieve financial and residential independence. Further, Brothern still had difficulty accepting that Williams caused

M.B.'s injuries. Given this lack of progress toward the goals set for her, it was unlikely Brothern would be restored to fitness and able to provide permanency for her children in the near future.

¶ 32 Because the minors are thriving in their foster-care environment and the respondent parents cannot provide permanency to the minors in the foreseeable future, we conclude the trial court's decision to terminate respondents' parental rights was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.